



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
Irvan A. "Van" Pearlberg, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, March 9, 2011

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Annette Lewis, Grif Chalfant, Johnny Sinclair, Van Pearlberg,
Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:06 p.m.

INVOCATION:

Mayor Tumlin called upon Council member Jim King to give the invocation.

PLEDGE OF ALLEGIANCE:

*Mayor Tumlin called on a young gentleman in the audience with Boy Scout
Troop 200 to lead the pledge of allegiance.*

PRESENTATIONS:

PROCLAMATIONS:

ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Tumlin briefly explained the consent agenda process. The following amendments were made to the consent agenda:

A motion was made by Council member King, seconded by Council member Sinclair, to suspend the rules of order to add items to the agenda regarding property acquisition. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved

A motion was made by Council member King, seconded by Council member Sinclair, to add an item to the consent agenda authorizing acquisition of the donation of the property at 47 Whitlock Avenue from Inland American St Portfolio for the purpose of constructing the South Marietta Parkway Median and Sidewalks Project. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved

A motion was made by Council member King, seconded by Council member Sinclair, to add an item to the consent agenda to approve a Settlement Agreement between the City of Marietta and Altered Images in the amount of \$22,500 to compensate the tenant for their interest in condemned property related to the Roswell Street Project. The motion carried by the following vote:

*Vote: 7 - 0 - 0 Approved
(See agenda items 20110213 and 20110223)*

-under Parks and Recreation: Agenda item 20101348 was amended to read, "Motion approving the replacement of the tennis courts at Merritt Park with funding from the Park Bond, Improvements to Existing Parks and Facilities line item." This matter should also show Council member Coleman voting abstaining.

A motion was made by Council member Sinclair, seconded by Council member Lewis, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved
with the following exception:

Council member Pearlberg voting against agenda item 20110115.

Council member Goldstein voting abstaining on agenda item 20110115.

Council member King voing against agenda items 20110168 and 20110197.

Council member Coleman abstaining on agenda item 20101348.

MINUTES:

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20110166 Regular Meeting - February 9, 2011

Review and approval of the February 9, 2011 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

MAYOR'S APPOINTMENTS:

CITY COUNCIL APPOINTMENTS:

*** 20110133 Marietta Redevelopment Corporation Appointments**

Re-appointment of Pete Bilson, Diane Lidz, Floyd Northcutt, Brian Strack and Randy Weiner to the Marietta Redevelopment Corporation Board of Directors.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

*** 20110132 Marietta Museum of History Appointments**

Approval of the Museum Board recommendation to appoint Johnny M. Walker, Jr., Winfield Scott Chadwick and James M. Hudgins to the Board of Directors.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

*** 20110134 Board of Zoning Appeals**

Appointment of Susan Grant to the Board of Zoning Appeals Ward 1, to fill an unexpired term expiring April 14, 2012.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

ORDINANCES:

20110086 Z2011-03 Eddie R. Gomez 712 Lawrence Street

Z2011-03 [REZONING] EDDIE R. GOMEZ request rezoning for property located in Land Lot12140, District 16, Parcel 0910, 2nd Section, Marietta, Cobb County, Georgia and being known as 712 Lawrence Street from CRC (Community Retail Commercial) to CRC (Community Retail Commercial) with additional use as a residence. Ward 5.

City Attorney, Douglas Haynie, opened the public hearing and called forward those wishing to speak.

Eddie R. Gomez, owner of the property located at 712 Lawrence Street, requested rezoning for property from CRC (Community Retail Commercial) to CRC (Community Retail Commercial) with additional use as a residence to allow his brother-in-law to live in the dwelling for a period of time.

Discussion was held.

A motion was made by Council member Sinclair, seconded by Council member Goldstein, to deny the rezoning request.

A substitute motion was made by Council member Pearlberg, seconded by Council member Lewis, to approve the rezoning request. The motion failed by the following vote:

Vote: 1 - 6 - 0 Failed

Voting Against: Annette Lewis, Grif Chalfant, Johnny Sinclair, Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Mayor Tumlin called for a vote on the original motion.

The motion was made by Council member Sinclair, seconded by Council member Goldstein, to Deny the rezoning request. The motion carried by the following vote:

Vote: 6 - 1 - 0 Approved to Deny

Voting Against: Van Pearlberg

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:

1. Economic/Community Development: Grif Chalfant, Chairperson

2. Finance/Investment: Annette Lewis, Chairperson

- * **20110144 Transfer of Prior Approved Funding between FY2011 Budget Accounts**
- [Ord 7521](#) Approval of an Ordinance amending the Fiscal Year 2011 Budget to move funds already budgeted in the City-wide Projects Fund to the Fleet Fund for the purchase of capital assets.
- This Matter was Approved on the Consent Agenda.**
- Vote: 7 - 0 - 0 Approved**

- * **20110162 Acceptance of grant from AFG**
- [Ord 7522](#) Approval of an Ordinance amending the Fiscal Year 2011 General Fund Budget to receive and appropriate grant funds from the Assistance to Firefighters Grant (AFG) within FEMA and to transfer matching funds from the General Fund.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

- * **20110131 CDBG (Marietta Yells)**
- [Ord 7520](#) Approval of an Ordinance amending the FY2011 CDBG budget to provide temporary funding to the Marietta Yells Program until it is reimbursed by the US Department of Housing and Urban Development.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

- * **20110064 CA2011-03 [CODE AMENDMENT] Amending the Comprehensive Development Code regarding Division 712, Section 712.08 Tree Protection and Landscaping**
- [Ord 7528](#) Approval of an Ordinance CA2011-03 [CODE AMENDMENT] amending the Comprehensive Development Code of the City of Marietta, Division 712 (Supplementary Use Regulations) Section 712.08 (Tree protection and landscaping).

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

- * **20110190 Access Easement Agreement**
- Motion approving an Access Easement Agreement between the City of Marietta, the Retreat at Dorsey Manor, the Tower at Dorsey Manor and the Marietta Housing Authority subject to final approval of the City Manager and City Attorney.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20110097 Precinct Polling Place Amendment**

[Ord 7523](#)

Approval of an Ordinance changing the polling place for Ward 7 from the Mansour Center to the Cobb County Civic Center, 548 S Marietta Parkway, Marietta to coincide with the change adopted by the Cobb County Board of Election and Registration

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson

* **20101348 Merritt Park Tennis Courts**

Motion approving the replacement of the tennis courts at Merritt Park with funding from the Park Bond funds.

Motion approving the replacement of the tennis courts at Merritt Park with funding from the Park Bond, Improvements to Existing Parks and Facilities line item.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 1

Approved

Abstaining: Rev. Anthony Coleman

* **20110118 Park Shade Structures**

Motion authorizing the purchase of shade structures from the 2009 Parks Bond for the Lewis Park off-leash area and Whitaker Park playground as presented.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

5. Personnel/Insurance: Van Pearlberg, Chairperson

* **20110119 Personnel Rules and Regulations**

[Ord 7526](#)

Approval of an Ordinance amending the City/BLW Personnel Rules and Regulations to clarify certain sections of the code.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

* **20110124 Pension Board Investment Policy**

Motion approving the attached amended City/BLW Pension Board Investment Policy.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

6. Public Safety Committee: Anthony Coleman, Chairperson

*** 20110117 Pre-Disaster Mitigation Plan**

Motion approving the Pre-Disaster Mitigation Plan (PDMP) as presented.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

*** 20110143 Standard Operating Procedures**

Motion approving revisions to the following Standard Operating Procedures for the Marietta Police Department : Intern Program, S.O.P. #A037, Personnel Selection S.O.P. A039, Organizational Structure S.O.P. #A041, Community Response Unit, S.O.P. #C020, Law Enforcement Explorer Program, S.O.P. #C030, Crime Prevention, S.O.P #C050, Volunteer Program, S.O.P. #C060, Informants, S.O.P #S033, Training, S.O.P. #T050

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

7. Public Works Committee: Jim King, Chairperson

*** 20110055 RTOP Intergovernmental Agreement**

Motion to approve the Regional Transportation Operations Program (RTOP) Intergovernmental Agreement with the Georgia Department of Transportation along Cobb Parkway.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

*** 20110115 Kennesaw Mountain to Chattahoochee Trail North and Intown Section Temporary State Route**

Approval of GDOT Local State Route Acceptance Resolution, Reference #3548, 66(146R) adding the route of the Kennesaw Mountain Trail to a temporary state route for funding purposes.

Council member Goldstein disclosed that he, family members and/or an entity that he owns, owns property in the downtown area and on Waverly Way. This project may go through some of that property.

This Matter was Approved on the Consent Agenda.**Vote: 5 - 1 – 1 Approved**

Abstaining: Philip M. Goldstein

Voting Against: Van Pearlberg

SCHEDULED APPEARANCES:**20110192 Balloons by Bernadette**

Ms. Bernadette McKeon, Balloons By Bernadette Owner

Ms. Bernadette McKeon, owner of Balloons By Bernadette, spoke regarding the current Sign Ordinance, which categorizes the use of balloons placed outside as Prohibited Signs. Mrs. McKeon asked Council to review and possibly amend the ordinance to allow the use balloons.

Discussion was held. Staff was asked to place this matter on the next Judicial Legislative Committee meeting agenda.

UNSCHEDULED APPEARANCES:

Jim Waters, one of the owners of property located at 313 Marble Mill Road, spoke regarding an application for a Special Land Use Permit for the property, which was denied by City Council last month.

Barbara Norton, who resides at 84 Polk Street, expressed concern about a "round-about" planned for Polk Street at Mountain View Road.

OTHER BUSINESS:**20110191 Height Advisory Committee**

A Resolution of the Council to accept and acknowledge the recommendations from the "Marietta Height Guidance for Historic Marietta Square Task Force" as duly approved at the February 23, 2011 meeting of the said Height Committee and to further thank the committee for its diligence, efforts, and contribution on behalf of our City.

Council Member Philip M. Goldstein disclosed that he, family members and other entities he and/or family members have ownership in, own properties and/or entities that own properties in the Downtown Marietta area. Council member Goldstein then left the dais.

Discussion was held regarding the Height Advisory Committee recommendations.

A motion was made by Council member Lewis, seconded by Council member King, to approve the Resolution as amended, "A Resolution of the Council to receive and file the recommendations from the "Marietta Height Guidance for Historic Marietta Square Task Force" dated February 23, 2011, and to further thank the committee for its diligence, efforts, and contribution on behalf of our City."

Further discussion was held regarding the language of the Resolution.

A substitute motion was made by Council Chalfant, seconded by Council member King, to approve the Resolution as written.

The motion was made by Council member Chalfant, seconded by Council member King, that this matter be Approved. The motion carried by the following vote:

Vote: 5 - 1 - 0 Approved
Voting Against: Annette Lewis
Absent for the vote: Philip M. Goldstein

20110112**Demolition Regulations****Ord 7525**

Approval of an Ordinance amending the Marietta City Code Section 7-8-8-050 regarding demolition permits within the Historic District and to approve amended wording for Marietta City Code Section 7-8-9-050 regarding demolition permits issued by the Historic Preservation Commission.

Mayor Tumlin called forward those wishing to speak regarding this matter.

Council Member Philip M. Goldstein disclosed that he, family members and other entities he and/or family members have ownership in own properties and/or entities that own properties in Marietta.

Philip M. Goldstein, who resides at 31 Powers Ferry Manor, submitted a Constitutional Challenge for the record and expressed concern regarding the proposed changes to demolition permits.

Discussion was held and the following amendments were made to the Demolition Regulations ordinance:

-Item 1a for both sections shall read, "Except as provided in "c", any applicant requesting a demolition permit..."

-Item 1d shall be removed from both sections of the ordinance.

Mayor Tumlin closed the public hearing.

A motion was made by Council member Pearlberg, seconded by Council member Chalfant, to approve the ordinance amending the Marietta City Code Section 7-8-8-050 regarding demolition permits within the Historic District and to approve amended wording for Marietta City Code Section 7-8-9-050 regarding demolition permits issued by the Historic Preservation Commission, as amended:

-Item 1a for both sections shall read, "Except as provided in "c", any applicant requesting a demolition permit..."

-Item 1d shall be removed from both sections of the ordinance.

Further discussion was held regarding the proposed ordinance.

Council member Chalfant made a motion to call the question. The motion failed by the following vote:

Vote: 2 - 4 - 0 Failed

Voting Against: Annette Lewis, Johnny Sinclair, Rev. Anthony Coleman and Jim King

Further discussion was held.

The motion was made by Council member Pearlberg, seconded by Council member Chalfant, that this matter be Approved as amended. The motion carried by the following vote:

Vote: 4 - 2 - 0

Approved as Amended

Voting Against: Annette Lewis and Rev. Anthony Coleman

20110196

Height Ordinance and Governing Code

[Ord 7524](#)

Approval of an Ordinance amending the Marietta City Code Section 7-8-8-090 related to height of buildings in and around the Marietta Square pursuant to the map on file with the City Clerk's office and to approve amended language to Marietta City Code Section 7-8-8-050 regarding language related to the governing code and to approve amended wording to the Marietta City Code Section 7-8-9-050(E) regarding the governing code.

Mayor Tumlin called forward those wishing to speak regarding this matter.

Council Member Philip M. Goldstein disclosed that he, family members and other entities he and/or family members have ownership in, own properties and/or entities that own properties in the Downtown Marietta area.

Height Advisory Committee members Steve Imler, Bobby Thanepohn and James Eubanks all spoke briefly regarding the Committee recommendations relating to the height of buildings in and around the Marietta Square.

Discussion was held regarding the map submitted by the Committee that outlines the area that the Ordinance would govern. It was suggested that the entire last sentence of Section 7-8-8-090 H that begins, "In all other areas outside the attached map..." be deleted.

Height Advisory Committee member Wes Godwin also spoke briefly regarding the Committee recommendations.

Caroline Coppedge, who owns the building where Jeweler on the Square and Doodlebugs are located, expressed concern regarding the proposed Height Ordinance stating that it would negatively affect her property.

Philip M. Goldstein, who resides at 31 Powers Ferry Manor, stated that he, family members and other entities he and/or family members have ownership in own properties and/or entities that own properties in Downtown Marietta. Mr. Goldstein also referenced the Constitutional Challenge previously submitted and made an objection for the record, of Mayor Tumlin presiding over this portion of the meeting. Mr. Goldstein believes Mayor Tumlin to be opposed to the five (5) story building Mr. Goldstein has proposed for the Cuthbertson property on the square.

For the record, Mayor Tumlin stated that he did not have a financial interest in this matter which would require him to step down. Furthermore, Mayor Tumlin stated that he had not been individually served by regular mail or service, as it relates to the Constitutional Challenge submitted by Mr. Goldstein. Mr. Goldstein stated that the

Constitutional Challenge was filed with the City Clerk. (At this time, Mr. Goldstein personally handed a copy of the Constitutional Challenge to the Mayor and Council members.) Mr. Goldstein continued to speak, expressing concern regarding the proposed Height Ordinance.

Height Advisory Committee member Patrick Thompson spoke briefly regarding the Committee recommendations.

City Attorney Douglas Haynie noted, for the record and for the court reporter present for the meeting, that the hearing held tonight was not complete, as there were six (6) other individuals who testified during the City Council Agenda Work Session held on Monday, March 7, 2011. Their testimony would also be considered by City Council regarding this matter.

Mayor Tumlin closed the public hearing.

A motion was made by Council member King, seconded by Council member Pearlberg to approve the ordinance amending the Marietta City Code Section 7-8-8-090 related to height of buildings in and around the Marietta Square pursuant to the map on file with the City Clerk's office and to approve amended language to Marietta City Code Section 7-8-8-050 regarding language related to the governing code and to approve amended wording to the Marietta City Code Section 7-8-9-050(E) regarding the governing code, as amended:

-The entire last sentence of Section 7-8-8-090 H that begins, "In all other areas outside the attached map..." was deleted.

-The first sentence of Section 7-8-8-090 H shall read, "No structure, building, building addition or appurtenance thereof shall be allowed..."

-The ordinance shall be applicable to the area on the attached map, designated as Exhibit A, highlighted by a red box.

The motion was made by Council member King, seconded by Council member Pearlberg, that this matter be Approved. The motion carried by the following vote:

Vote: 5 - 1 - 0 Approved

Voting Against: Annette Lewis

Absent for the vote: Philip M. Goldstein

Council member Goldstein returned to the dais.

*** 20110168 National League of Cities (NLC)**

Motion approving travel expenses for Mayor and Council members who wish to attend the National League of Cities (NLC) Congressional City Conference in Washington, DC, March 12-16, 2011.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0 Approved

Voting Against: Jim King

*** 20110197 GMA 2011 Annual Convention**

Motion approving travel and training expenses for the Mayor and Council members who wish to attend the Georgia Municipal Association (GMA) 2011 Annual Convention in Savannah, GA June 25 - 28, 2011

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 – 0 **Approved**
Voting Against: Jim King

* **20110223** **47 Whitlock Avenue**

Motion authorizing acquisition of the donation of the property at 47 Whitlock Avenue from Inland American St Portfolio for the purpose of constructing the South Marietta Parkway Median and Sidewalks Project.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 **Approved**

* **20110213** **Settlement Agreement**

Approval of a Settlement Agreement between the City of Marietta and Altered Images in the amount of \$22,500 to compensate the tenant for their interest in condemned property related to the Roswell Street Project.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 **Approved**

* **20110167** **BLW Actions of March 7, 2011**

Review and approval of the March 7, 2011 actions and minutes of the Marietta Board of Lights and Water.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 **Approved**

ADJOURNMENT:

The meeting was adjourned at 9:43 p.m.

Date Approved: April 13, 2011

R. Steve Tumlin, Mayor

Attest: _____
Stephanie Guy, City Clerk